

Section By Section Summary of the Uniform Special Deposits Act as adopted by North Dakota Senate Bill 2123

Creates chapter 6-08.6 of the North Dakota Century Code

Section 1

6-08.6-01. Definitions

Contains the key terms used throughout the act including: “account agreement,” “bank,” “beneficiary,” “depositor,” “knowledge,” and “permissible purpose.”

6-08.6-02. Scope; Choice of Law; Forum

Sets forth the scope of the Act. The Act applies to a special deposit where the account agreement states the intent of the parties to establish a special deposit. The Act is an opt-in statute; parties to the account agreement must affirmatively decide to apply its protections. Parties can select to be governed by the laws of any state that has enacted the Act, even without any relation between such state and the parties, the forum state, special deposit or any related transaction. Parties have the same flexibility in choice of forum for the resolution of disputes.

6-08.6-03. Variation by Agreement or Amendment

Sets forth which sections of the act may be varied by agreement and which sections may not be varied by agreement.

May be Amended in the Account Agreement:

- 6-08.6-06. Payment to Beneficiary by Bank or Credit Union
- 6-08.6-11. the Duties and Liability of Bank or Credit Union
- 6-08.6-12. the Term and Termination of a special deposit

May Not Be Amended in the Account Agreement (with limited exceptions):

- 6-08.6-01. Definitions
- 6-08.6-02. Choice of Law, Scope, and Forum
- 6-08.6-03. Variation by Agreement or Amendment
- 6-08.6-04. Requirements for Special Deposits
- 6-08.6-05. Permissible Purpose
- 6-08.6-07. Property Interest of Depositor or Beneficiary
- 6-08.6-08. When Creditor Process is Enforceable Against Bank or Credit Union
- 6-08.6-09. Injunction or Similar Relief
- 6-08.6-10. Recoupment or Set Off
- 6-08.6-13. Principles of Law and Equity

6-08.6-04. Requirements for Special Deposit

Sets forth the requirements for a special deposit. In order for a deposit to be a special deposit, the deposit must be: (1) designated as “special” in the account agreement

governing the deposit at the bank; (2) for the benefit of at least two beneficiaries (one or more of which may be a depositor); (3) denominated in money; (4) for a permissible purpose; and (5) subject to a contingency that is not certain to occur, but if it does occur, creates the bank's obligation to pay a beneficiary.

6-08.6-05. Permissible Purpose

States that a special deposit must serve at least one permissible purpose stated in the account agreement from the time the special deposit is created until it is terminated. If the bank or a court determines that the special deposit no longer serves a permissible purpose before the termination of the special deposit, the protections of the Act cease to apply to the special deposit and the bank may take actions it believes necessary, including terminating the special deposit.

6-08.6-06. Payment to Beneficiary by Bank or Credit Union *(May be amended by agreement)*

Provides that a bank is obligated to pay a beneficiary (unless stated otherwise) if there are sufficient funds in the balance of the special deposit. The bank's debt to the beneficiary accrues when a bank is obligated to pay a beneficiary (i.e., when the contingency has been determined and the bank has knowledge of the determination). A bank is not obligated to pay a beneficiary if there are not sufficient funds in the special deposit account.

Provides a default rule that when funds in a special deposit are insufficient to pay a beneficiary in full, the beneficiary may elect to receive the available funds and that payment discharges the bank's obligation to pay the beneficiary. The obligation is immediately due and payable unless the account agreement provides otherwise.

6-08.6-07. Property Interest of Depositor or Beneficiary

Contains one of the key protective provisions of the Act that makes the special deposit "bankruptcy remote" from the depositor. Neither a depositor nor a beneficiary has a property interest in a special deposit before the outcome of the contingency is determined. Any property interest is the right to receive future payment once the bank becomes obligated to pay a beneficiary and not a right to the special deposit itself.

6-08.6-08. When Creditor Process Enforceable Against Bank or Credit Union

This provision protects the special deposit from creditor process that might cause the bank holding the special deposit to "freeze" all or part of the special deposit, which would disable the special deposit from performing its permissible purpose. Creditor process is only enforceable if process is served on the bank and provides sufficient information to identify the depositor or beneficiary, and the bank has reasonable opportunity to act on the process.

6-08.6-09. Injunction or Similar Relief

Prevents creditors and other parties from seeking a temporary restraining order or preliminary injunction against a bank holding a special deposit. This section avoids that

result and creates a safeguard for situations involving potential fraud that is modeled after Section 5-109(b) of the Uniform Commercial Code.

6-08.6-10. Recoupment or Set Off

Establishes that a bank may not exercise a right of recoupment or set off against a special deposit, with limited exceptions, including for unpaid fees with respect to a special deposit or when a bank needs to remedy a mistaken credit.

6-08.6-11. Duties and Liability of Bank or Credit Union *(May be amended by agreement)*

Clarifies that a bank does not have a fiduciary duty to any person with respect to the special deposit. A debtor-creditor relationship is established between the bank and its customer. The ultimate obligation of a bank holding a special deposit will be due to a beneficiary (which could be a depositor) once the occurrence of a contingency is determined.

Also codifies current commercial practice where the bank holding the special deposit will rely upon a record, if it, rather than a third party, is to determine the contingency. A bank does not have a duty under the Uniform Special Deposits Act to make such a determination, but it may be required under other law to make such a determination (for example, to determine under federal or state anti-money laundering law if a special deposit violates prohibitions against money laundering), or it may be required to act because another person has made such a determination under other law, including a court of competent jurisdiction.

6-08.6-12. Term and Termination *(May be amended by agreement)*

Provides default rules. In the event the account agreement does not provide a termination provision, a special deposit terminates five years after the date the special deposit was first funded. Also contains a right of remission.

6-08.6-13. Principles of Law and Equity

Specifies that the Uniform Special Deposits Act is supplemented by current law (UCC, consumer protection law, law governing deposits generally, law related to escheat and abandoned or unclaimed property) except to the extent those laws are inconsistent with this act.

6-08.6-14. Uniformity of Application and Construction

Contains the standard section in all uniform acts providing that courts must construe the chapter to promote uniformity among the enacting states.

Section 2. Application

Provides that this Act applies to a special deposit made under an account agreement executed after July 31, 2025, and a special deposit made under an agreement executed before August 1, 2025 if all parties entitled to amend the agreement agree to make the deposit a special deposit governed by chapter 6-08.6; and the special deposit referenced in the amended agreement satisfies Section 6-08.6-04.